IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 507 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HITESH @ HITENDRA KIRTIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 507 of 2000
MR ASHISH M DAGLI for Petitioner No. 1
Mr.DP JOSHI, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 26/07/2001

ORAL JUDGEMENT

1. The order dated 25.11.2000 of Shri S.D.Dave, learned City Sessions Judge, is under challenge in this revision.

2. In the impugned order the Sessions Judge has rejected the prayer of the revisionist for sending his disputed signature on the chit to the Hand Writing Expert for comparison and report on his signature on the chit which was subsequently brought on record. There were two

prayers in the application, one prayer was granted and the prosecution was directed to supply the copy of chit to the revisionist within two days. The revisionist is aggrieved from the portion of the order, through which his request for sending his signature and hand writing to the Hand Writing Expert for examination, opinion and report was turned down by the Court below.

3. Shri Ashish M. Dagli, learned Counsel for the revisionist and Shri D.P.Joshi, learned A.P.P. have been heard.

4. Preliminary objection has been raised by Shri D.P.Joshi that the revision is not maintainable because the impugned order is interlocutory order. He also contended that regarding production and admissibility of the same chit earlier Criminal Revision No.322 of 2000 was filed which was dismissed on the ground that it was filed against interlocutory order and since the impugned order is consequence of that order it also attains the nature of interlocutory order hence the revision is not maintainable.

5. I am unable to accept the contention of Shri Joshi for the obvious reason that the impugned order is not an interlocutory order in so far as it rejects the request of the revisionist of sending his hand writing and signature to the Expert for examination, opinion and report. The Sessions Judge has not tried to understand the true purport of order dated 25.9.2000 passed in Criminal Revision Application No.322 of 2000. Inter-alia it was observed in the earlier revision that the objection for production of chit has not much force because the chit was already brought on record. It was further observed that however it will be open to the revisionist to raise all objections to the admissibility of chit and also its proof and the manner of proof and also objection that its copy was not supplied to the revisionist during trial. With these observations it was directed that these objections shall be decided by the Court below in accordance with law as and when raised by the revisionist. The important portion of the above direction is that it will be open to the revisionist to raise all objections to the admissibility of the chit and also its proof as well as manner of proof. The chit was brought on record. The witness, namely, the wife of the revisionist was recalled and she admitted that the signature and handwriting on the chit are of his husband, namely, the accused - revisionist. This was the manner of proof in which the chit was proved by the prosecution at a later stage. However, it was not a case where the

accused admitted his signature and hand writing on the chit. He denied his signature and hand writing. Consequently it was a dispute regarding manner of proof and also regarding admissibility of the chit which was so proved. Even the rules of natural justice require that once a document has been proved by a prosecution witness an opportunity should be given to the accused to lead defence evidence in rebuttal. The observation of the Sessions Judge that it was moved to delay the trial cannot be appreciated. Likewise his observation that by lapse of time the hand writing of the accused must have changed is nothing but an observation based on mere surmises and conjectures. No such judicial notice could be taken by the Sessions Judge. Likewise he has observed that since the hand writing and signature of the accused revisionist were admitted by his own wife there is no necessity to obtain expert's opinion. However, he did not take into consideration that the wife of the revisionist is the complainant and a prosecution witness. If the document has been proved in the manner aforesaid by one of the prosecution witnesses and the document itself is denied by the accused, the rules of natural justice require that he should be given opportunity to lead evidence to controvert the manner of proof his hand writing and signature and also the admissibility of the document which had already been highlighted in the previous Criminal Revision Application.

6. For the reasons stated above the Revision succeeds and is hereby allowed. The impugned order in so far as it rejects the prayer of the revisionist to send the disputed signature and hand writing on the chit with his specimen signature and hand writing to the Expert is quashed and set aside. The Sessions Judge is directed to afford an opportunity to the revisionist to give his specimen signature and hand writing and the same along with the disputed hand writing and the signature of the revisionist produced at a later stage shall be sent to the Hand Writing Expert for opinion and after receipt of opinion the case shall be decided in accordance with law.

sd/-

Date : July 26, 2001 (D. C. Srivastava, J.)

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